

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK G. PRESTOY

Appeal 2007-0059
Application 09/252,326¹
Technology Center 2600

Decided: May 1, 2007

Before: KENNETH W. HAIRSTON, ALLEN R. MACDONALD and JAY
P. LUCAS, *Administrative Patent Judges.*

LUCAS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals from a final rejection of claims 1-26 under authority of 35 U.S.C. § 134 (2002). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b) (2002).

¹ Application filed June 18, 1999. Appellant claims the benefit under 35 U.S.C. § 119 of provisional application 60/074965, filed 02/17/1998. The real party in interest is Verizon Corporate Services Group, Inc.

Appellant's invention relates to a system and method for delivering interactive multimedia movies and data services to subscribers located at one or more geographically dispersed subscriber sites, which may include hotels or multi-dwelling corporate offices. In the words of the Appellant:

In accordance with methods and systems consistent with the present invention, a high capacity interactive multimedia system is provided that comprises a video server module that includes a plurality of massively parallel nodes for streaming a plurality of video streams from one or more video titles stored in the video server module, a web server that stores data, a high capacity transport system for transporting the video streams and the data to a plurality of clients, and a set of display devices connected to the clients, respectively, for displaying the video streams and the data.

Claim 1 is exemplary:

1. An interactive multimedia system, comprising:
a massively parallel video server that includes:
a set of storage devices; and
a plurality of processors configured to stream a plurality of video streams from one or more video titles stored in the set of storage devices, the plurality of processors all having concurrent access to said set of storage devices for concurrently streaming the plurality of video streams;
a plurality of client devices configured to receive at least some of the plurality of video streams; and
a high capacity transport system for transporting the video streams from the massively parallel video server to the plurality of client devices.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Dewkett	US 5,646,676	Jul. 8, 1997
Cannon	US 6,014,706	Jan. 11, 2000
Fukui	US 6,052,715	Apr. 18, 2000
Banks	US 6, 139,197	Oct. 13, 2000

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Hluchyj

US 6,151,325

Nov. 21, 2000

Ehreth

US 6286,142

Sep. 4, 2001

The Examiner rejected claims 1-26 as follows:

Group I: Claims 1, 4, 6, 11, 12, 17, and 20 stand rejected under 35

U.S.C. § 102(e) as being anticipated by Dewkett.

Group II: Claims 2, 18, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dewkett in view of Ehreth.

Group III: Claims 3, 5, 10, 13, 15, 19, 23, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dewkett in view of Banks.

Group IV: Claims 7-9, 21, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dewkett in view of Hluchyj.

Group V: Claims 14 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dewkett in view of Banks as applied to claims 3 and 19, and further in view of Cannon.

Group VI: Claim 16 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Dewkett in view of Banks as applied to claim 5, and further in view of Fukui.

Appellant contends that the claimed subject matter is not anticipated by Dewkett, or rendered obvious by Dewkett in combination with Ehreth, Banks, Hluchyi, Cannon or Fukui, for reasons to be discussed more fully below. The Examiner contends that each of the six groups of claims is properly rejected.

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the Briefs and the Answer for their respective details.

Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived.

See 37 C.F.R. § 41.37(c)(1)(vii) (2004).²

We affirm the rejections.

ISSUE

The issue is whether Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. §§ 102(e) and 103(a). The issue turns on whether the Dewkett reference discloses the claimed plurality of processors having concurrent access to the storage devices for concurrently streaming a plurality of video streams, and other issues of claim interpretation and application to the references as will be indicated below.

FINDINGS OF FACT

Group I: Findings with respect to the rejection of claims 1, 4, 6, 11, 12, 17, and 20 under 35 U.S.C. § 102(e).

1. Examiner described this rejection over the patent to Dewkett in detail in his Office Action of May 10, 2004. Referring to Figures 1 and 2 of

² Appellants have not presented any substantive arguments directed separately to the patentability of the dependent claims or related claims in each group, except as will be noted in this opinion. In the absence of a separate argument with respect to those claims, they stand or fall with the representative independent claim. *See In re Young*, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991). *See also* 37 C.F.R. § 41.37(c)(1)(vii).

Dewkett, Examiner has (in part) read the “massively parallel video server that includes a plurality of processors...” on Dewkett’s “Massive Multimedia (MM) Distribution System which includes a Host Server or Computer System (Host) (figs. 1, 2 and col. 1, lines 2-13 and col. 8, line 60- col. 9, line 23).” Examiner notes that “MM system includes a plurality of Processors (CPUs) 101 all connected by a host system bus 103 and I/O buses 105 and having concurrent access to Disk Drives 107”. The “set of storage devices” is connected by busses via a plurality of Multimedia (MM) Adapters 106, for concurrently streaming a massive plurality of video streams to a plurality of Set-Top-Boxes (STBs) 109 1 – N, read on a plurality of client devices. The “high capacity transport system” is read on Network 108 (col 8, line 64 to col 9. line 10).

2. Appellant argues that processors 101 cannot be read on his claimed plurality of processors as “the host CPUs 101” are not “configured to stream” video, as recited in claims 1 and 17. Instead, argues Appellant, “Dewkett et al. uses multimedia controller (MMC) processors 401 to ‘control movie data transmission to the STB[s]’”. (Reply Br. 3).
3. We find that Dewkett teaches a number of processors within his MM system, some (e.g. CPUs 101) controlling higher functions of starting and stopping the streaming at a command level, and some (such as MMC processors 401) handling the detailed processing at the data block level for supplying the STBs with streams of video. All the processors are part of the permanent circuitry with concurrent access to the set of storage devices, though certain processors may control

only certain members of the set, activating them in an organized manner according to their respective programming. The claim does not require that all processors have the same programming or do exactly the same function, but rather that they all are configured to effect the streaming of a plurality of video streams, in the manner claimed. Dewkett teaches the processors performing their individual functions, including controlling the activation of each other, to create the concurrent streaming of the plurality of video streams. Examiner recognizes these different functions of the different processors, as pointed out by Appellant in the Reply Brief, page 5. And the claims, especially claim 6, recognize that “at least one of the plurality of processors” may be running a video server program while others are doing other functions.

Group II: Findings with respect to the rejection of claims 2, 18, and 26 under 35 U.S.C. § 103(a) for being obvious over Dewkett in view of Ehreth.

1. We find that Ehreth discloses the use of a plurality of television sets 100, in Figure 1 and Column 2, lines 54 ff, in the context of a video distribution system. It would have been obvious to incorporate the teaching of multiple client devices in Dewkett, as both teachings address the same field of endeavor, and Ehreth merely teaches using a plurality of devices disclosed in Dewkett.

Group III: Findings with respect to the rejection of claims 3, 5, 10, 13, 15, 19, 23, and 24 under 35 U.S.C. § 103(a) for being obvious over Dewkett in view of Banks.

1. Appellant argues (Br. 18) that while Banks does teach the encoding of the video, it fails to teach the storage of the encoded video as claimed. Examiner argues that Dewkett teaches the storage of the video signals, and Banks is used to establish that the encoding of video is clearly part of the prior art. Thus, the Examiner argues, the combination of references establishes that it would be obvious in Dewkett to store encoded, rather than non-encoded, video information. In view of the maturity of the video recording arts and the cited teachings, we find that the recording of a compressed encoded video signal, either real time or previously stored, would be obvious to one of ordinary skill in the art over storing the same signals in another format.
2. Appellant and Examiner both indicate (Br. 19; Examiner's Answer 7) that Banks teaches a delivery system for video (col. 3, line 45) that can also be used for web data (col. 3, line 55). Appellant further argues that the teaching of Banks is that such a system must be used for one or the other, but not both. (Br. 19, first full paragraph) We find this too restrictive an interpretation of Banks, especially as the server 102 and client 110 nomenclature is used when talking of the delivery of both types of information. The teaching is more correctly interpreted that it does not matter which type of information is handled, including a mixture of video and data.

Groups IV, V, and VI.

1. Separate arguments are not provided for the claims in these rejections.

PRINCIPLES OF LAW

On appeal, Appellant bears the burden of showing that the Examiner has not established a legally sufficient basis for the rejection of the claims.

“In reviewing the [E]xaminer’s decision on appeal, the Board must necessarily weigh all of the evidence and argument.” *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

Our reviewing court states in *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) that “claims must be interpreted as broadly as their terms reasonably allow.” Our reviewing court further states, “[t]he terms used in the claims bear a ‘heavy presumption’ that they mean what they say and have the ordinary meaning that would be attributed to

those words by persons skilled in the relevant art.” *Texas Digital Sys. Inc v. Telegenix Inc.*, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002).

References within the statutory terms of 35 U.S.C. § 102 qualify as prior art for an obviousness determination only when analogous to the claimed invention. *In re Clay*, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992). Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. *In re Deminski*, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); *see also In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979) and *In re Bigio*, 381 F3d 1320, 1325, 72 USPQ2d 1209, 1212 (Fed. Cir. 2004).

ANALYSIS

Appellant contends that Examiner erred in rejecting claims 1 - 26 under 35 U.S.C. §§ 102(e) and 103(a). Reviewing the findings of facts above, we find that Dewkett alone recites the elements required for a rejection under 35 U.S.C. § 102(e) for claims 1, 4, 6, 11, 12, 17, and 20; and in combination with Ehreth, Banks, Hluchyi, Cannor or Fukui provides

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teachings for rejections under 35 U.S.C. § 103(a) for the other claims.

Appellant has presented reasoned arguments, but Examiner's broad but reasonable interpretations of the plain meanings of the elements of the claims were persuasive in supporting the rejections.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner did not err in rejecting claims 1- 26. The rejection of those claims is affirmed

OTHER ISSUES

Examiner is reminded that USPTO procedures require that rejections be fully repeated in the Examiner's Answer, and that the Board is not referenced to other actions (e.g. Final Rejections) in the file. *See* MPEP § 1207.02. In the interest of reasonable dispatch of this appeal the procedure was overlooked; however, in future appeals an administrative remand would be appropriate.

DECISION

The Examiner's rejection of 1 - 26 is affirmed.

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AFFIRMED

ELD

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